Admiralty and maritime jurisdiction embraces matters relating to the sea and to its commerce and navigation. But a hydroaeroplane is not of the sea, but of the air; neither does it *navigate* the seas in any sense of the word. Navigation means movement on water in ships—it is the science of directing the course of vessels [32]—and seamanship is necessarily involved. The taking off and landing of a hydroaeroplane, however, belongs to the art of aviation rather than navigation. Maritime law was established "to regulate the dealing and intercourse of merchants and mariners, in matters relating to the sea." [33] To include a hydroaeroplane within this jurisdiction, therefore, be it a land or water machine, appears to be neither within the letter nor the spirit of our constitution, nor within the meaning of the phrase "admiralty and maritime" as understood by commercial nations from the time of the Rhodians.

R. W. T.

THE RIGHT OF A DISEASED ALIEN WIFE OF A CITIZEN TO ADMISSION TO THE UNITED STATES.—The admission of diseased persons into the United States is regulated by the Immigration Act of 1917, Section 3 of which provides [1] that persons afflicted with a loathsome or dangerous disease shall be excluded; but Section 22 provides:[2] "That whenever an alien shall have been naturalized or shall have taken up his permanent residence in this country, and shall thereafter send for his wife . . . and said wife . . . shall be . . . affected with any contagious disorder, such wife . . . shall be held . . . " and precautions taken before she is admitted; the same section proceeds: "Provided, that if the person sending for wife . . . is naturalized, a wife to whom married . . . subsequent to such husband's . . . naturalization shall be admitted without detention."

to be vessels within the meaning of the Tariff Law (Act Oct. 3, 1913, par. 4—J. subds. 5 and 6 [U. S. Comp. St. pars. 5309, 5310]; Treasury Decision No. 36156.) Rulings not dissimilar have been made by the Department of Commerce. A libel against a hydro-aeroplane has been filed in the United States District Court for the Southern District of New York, and process issued thereon. American Bar Ass'n., 1921, Report of the Special Committee on the Law of Aviation, pp. 7, 24." Per Cardozo, J., in the instant case. See note 9, *supra*.

A libel against a hydro-aeroplane was also filed in Yacht Repair & Storage Co. v. one Hydro-aeroplane or Flying Boat, D. C. U. S., E. D. Pa., No. 79 in Admiralty, 1920; but in neither instance was the court required to decide the jurisdictional question.

[32] Century Dictionary and Cyclopedia, Vol. 6, Navigation.

[33] Benedict's Admiralty, 4th Ed. (1910), par. 140.

[1] Comp. St. 1918, Comp. St. Ann. Supp. 1919, s. 4289¼ b. Fed. Stat. Ann., 1918 Supp., p. 214.

[2] Comp. St. 1918, Comp. St. Ann. Supp. 1919, s. 4289¼ l. Fed. Stat. Ann., 1918 Supp., p. 233.

The first occasion for judicial construction of these provisions arose under somewhat unusual circumstances:[3] a petition for a writ of *habeas corpus* was presented by a Chinese woman, born in China, afflicted with a dangerous contagious disease, whose husband was a native-born citizen of the United States, whereby the petitioner sought to have determined her right to admission to the United States, under the last-quoted clause of Section 22 of the Act of 1917. The contention of the petitioner was, that under that clause, the wife of a naturalized citizen may enter the United States as a matter of right, provided the marriage took place subsequent to the naturalization of the husband, and that the rights of naturalized citizens are no greater than those of a native-born citizen. The court, while conceding that the rights of naturalized citizens are no greater than those of a native-born citizen, which indeed appears self-evident,[4] sustained a demurrer to the petition. The court took the view that the clause, on which the claim for admission was based, applied only to those wives of naturalized citizens "who become naturalized through the naturalization of their husbands," and so found that there was no provision of law authorizing the admission of the alien wife of either a native-born or a naturalized citizen as a matter of right.

It is well settled that a citizen can be excluded from this country only as a punishment for crime.[5] But the privilege of naturalization by marriage has, since it was first created by Congress,[6] been extended only to women who might themselves be naturalized.[7] And since Chinese persons born in China may not be naturalized,[8] it is clear the court was correct in denominating the petitioner as the alien wife of a native-born citizen, and that a valid distinction may be drawn between wives of citizens who remain alien in spite of their marriage to one who possesses or acquires citizenship, and wives who are capable of acquiring their husband's status of citizenship.

But the further question remains: does the statutory provision in question draw this distinction, either expressly or by any fair implication? The court's view that the provision applies only to those wives of naturalized citizens who become naturalized by the naturalization of their husbands can be founded only on the assumption that such a distinction was intended to be made; but this distinction was first drawn by Congress itself;[6] and surely no wording

[3] *Ex parte* Leong Shee, 275 Fed. 264 (D. C. 1921).

[4] Morse, Treatise on Citizenship, p. 122.

[5] *In re* Look Tin Sing, 21 Fed. 905 (C. C. 1884).

[6] Act of Feb. 10, 1855, 10 Stat. at L. 604; chap. 71, Rev. Stat. s. 1994; Comp. Stat. 1901, p. 1268.

[7] Kane v. McCarthy, 63 N. C. 299 (1869). Leonard v. Grant, 6 Sawy. 603, 5 Fed. 11 (C. C. 1880).

[8] Act of May 6, 1882, c. 126, s. 14, 22 Stat. at L. 61.

could more clearly embrace all wives of naturalized citizens than that used. It cannot be reasonable, then, to assume that Congress has, through mere inadvertence, used language in disregard of a distinction laid down by itself in a legislative enactment. And there is no indication, in the clause on which the petitioner's claim was based, of any intention to restrict the operation of the clause in any way. Furthermore, the first clause groups together "aliens" who "shall have been naturalized or shall have taken up permanent residence in this country," and the fair inference from this would be that the provisions of the section were intended to apply to all wives of husbands permanently settled here. In no part of the section, then, can an intention be discovered to limit the scope of its provisions to such wives as become naturalized through the naturalization of their husbands. So the conclusion is inevitable that the court's construction amounts to the insertion of qualifying words not found in the statute as enacted, and at variance with the indicated legislative intention.

A. R. C.

THE POWERS AND CONSTITUTIONALITY OF THE UNITED STATES RAILROAD LABOR BOARD.—A recent decision of an Illinois Federal District Court [1] is of legal and public interest in that it construes and affirms the constitutionality of the Act of Congress [2] which created the United States Railroad Labor Board. The question arose under a dispute as to the powers of the Board under Section 301 of the Transportation Act of 1920, which provides that all disputes between carriers and employees tending to the interruption of the operation of carriers shall, if possible, be decided in conference between representatives of both parties. The Labor Board asserted the right to control the selection of these conferees, claiming the right under Section 308 (4), which provides that "The Labor Board may make regulations necessary for the efficient execution of the functions vested in it by this title." The Pennsylvania Railroad Company sought to enjoin the Board and its members from exercising that right, and also from functioning as a Board generally, contending that the act is unconstitutional if, and in so far as, it attempts to impose compulsory arbitration. The Board moved to dismiss the bill, contending (1) that it is an administrative arm of the government over which the courts have no jurisdiction, and (2) that the Board had the power exercised by it. The court denied the motion to dismiss.

Four questions were presented to the court:

(1) Can the Labor Board be sued in a Federal court? It was held that the Labor Board, by analogy to the Interstate Commerce

[1] Penna. R. R. Co. v. U. S. R. R. Labor Board, *et al.*, U. S. Dis. Ct., Northern District of Illinois. In Equity, No. 2516. Not yet reported.

[2] Transportation Act of 1920, 41 Stats. at L. 457.